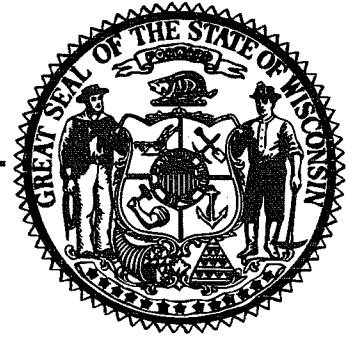


FRED A. RISSE
President
Wisconsin State Senate

April 1, 2010



Senator Lena Taylor, Chair
Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing
415 South, State Capitol
Madison, WI 53702

Dear Senator Taylor,

Thank you Chairperson Taylor and committee members for holding a hearing on Senate Bill 583, which I have authored along with Rep. Louis Molepske.

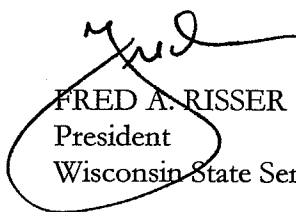
I am pleased to be joined by my constituent and former President of the State Bar, Steve Levine, who brought the issue addressed in this bill to me. Senate Bill 583 requires a person to appeal an administrative decision within 30 days after the date of service of the administrative decision in both contested and noncontested cases.

Under current law, a person must appeal an administrative decision in a contested case within 30 days after the date of service of the administrative decision. However, as interpreted by the Wisconsin Court of Appeals in *Collins v. Policano*, 231 Wis. 2d 420, 605 N.W. 2d 260 (Ct. App. 1999), a person has six months after the date of service of an administrative decision in a noncontested case to seek judicial review of the decision. This doesn't make any sense. Senate Bill 583 simply corrects this by establishing a 30 day appeal period for both contested and noncontested cases.

Last session, identical legislation, 2007 Assembly Bill 368 received unanimous support in both the Assembly Judiciary Committee and the Assembly as a whole. The bill then was unanimously recommended for passage by this committee but for whatever reason, was not scheduled for a final floor vote in the Senate.

I appreciate your willingness to schedule this measure for a public hearing. It is a good, common sense bill that and I encourage the committee to look favorably upon this important legislation.

Most Sincerely,


FRED A. RISSE
President
Wisconsin State Senate

FAR:tet

Cc: Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing

TESTIMONY OF ATTORNEY STEVEN LEVINE IN SUPPORT OF SB 583, WHICH WOULD AMEND WIS. STAT. § 227.53(1)(a)2 AND CREATE . § 227.53(1)(a)2m TO PROVIDE A UNIFORM 30 DAY PERIOD FOR JUDICIAL REVIEW OF AGENCY DECISIONS IN BOTH CONTESTED AND NONCONTESTED CASES.

The time period for a party to seek judicial review of a decision by a state agency is set forth in Wis. Stat. § 227.53(1)(a)2, which provides:

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review of the decision as provided in this chapter and subject to all of the following requirements:

...
[a]2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

Until a few years years ago, it was assumed that this statutory 30-day period for judicial review of state agency decisions applied to review of both contested and noncontested cases. A contested case is “an agency proceeding in which the assertion by one party of any substantial interest is denied or controverted by another party and in which, after a hearing required by law, a substantial interest of a party is determined or adversely determined by a decision or order.” Wis. Stat. § 227.01(3). A noncontested case is a case in which there is no disagreement among the parties or a case in which a hearing is not required by law.

Then came two related cases¹ by the Court of Appeals in which the court determined that the 30 day period for judicial review set forth in § 227.53(1)(a)2 applied only to contested cases. It determined that no statutory period applied to noncontested cases, and it therefore applied a 6 month “default” period. *Hedrich v. Board of Regents of Univ. of Wisconsin*, 2001 WI App. 2008, 248 Wis.2d 204, 216, 635 N.W.2d 650. While this 6 month default period may have been required by the Court’s determination that Wis. Stat. Ch. 227 fails to provide a limitation period for review of noncontested cases, it does not make practical sense for several reasons. 1. The 30 day period of § 227.53(1)(a)2 is designed to provide finality for agency decisions. A six month period frustrates that

¹ *Collins v. Policano*, 231 Wis.2d 420, 605 N.W.2d 260 (Ct. App. 1999); *Hedrich v. Board of Regents of Univ. of Wisconsin*, 2001 WI App. 2008, 248 Wis.2d 204, 635 N.W.2d 650.

purpose. 2. There are situations when it is unclear whether a case is contested or noncontested, leading to confusion as to the appropriate period for judicial review. 3. Since § 227.53(1)(a)2 still contains the 30 day period, casual practitioners of administrative law may be unaware of the different period for noncontested cases set by the Court of Appeals in *Hedrich*. 4. No logical reason exists to justify a different period of review for noncontested cases than the 30 day period set forth for contested cases.

To resolve the situation and avoid confusion, SB 583 would amend Wis. Stat. § 227.53(1)(a)2 and create . § 227.53(1)(a)2m to “return” to the pre-*Hedrich* 30 day review periods for both contested and noncontested cases. I strongly recommend Committee passage. Thank you.

Steven Levine
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Madison, WI 53705
March, 2010